

## **PART I: General Provisions and Definitions**

### **§3510. Short title**

This chapter shall be known and may be cited as the Louisiana Consumer Credit Law.

### **§3511. Scope**

A. Subject to the provisions of R.S. 9:3511(B), the parties to a consumer credit transaction may agree that the law of the place wherein the consumer credit transaction was entered into or the law of the residence of the buyer or debtor shall apply. For the purposes of this Chapter the residence of a buyer or debtor is the address given by him as his residence in any writing signed by him in connection with a consumer credit transaction. Until he notifies the creditor of a new or different address, the given address is presumed to be unchanged.

B. Whenever an action is brought in this state to enforce rights arising from consumer credit transactions wherever made the creditor shall, where applicable, reduce the charges so that they do not exceed those provided in Part II and/or III of this chapter.

C. Except as otherwise provided herein, the following agreements by a consumer are invalid with respect to consumer credit transactions, or modifications thereof, to which this chapter applies:

- (1) by which the consumer consents to the jurisdiction of another state; and
- (2) that fix venue.

D. All fees and charges authorized under this Chapter, whether or not such fees and charges constitute or are considered to be loan finance charges, shall be deemed to be “material to the determination of the interest rate” for purposes of exportation to borrowers residing in other states under the most favored lender doctrine of federal law.

E. All consumer credit transactions shall comply with federal Regulation Z of the Board of Governors of the Federal Reserve System. Failure to comply with Regulation Z is a violation of this Chapter.

### **§3512. Exclusions**

This law does not apply to:

- (1) Extensions of credit to organizations, including government or governmental agencies or instrumentalities.
- (2) The sale of insurance by an insurer, except as otherwise provided in the part on insurance; however, this law shall apply to the sale of insurance by an insurance agent in which such agent charges a credit service charge and the insured is permitted to defer all or part of the amount due such agent in two or more installments excluding the down payment, and which otherwise constitutes a “consumer credit sale”.
- (3) Transactions under public utility or common carrier tariffs if a subdivision or agency of

this state or of the United States regulates, approves, or consents to the charges for the services involved, the charges for delayed payment, and any discount allowed for early payment.

(4) Motor vehicle credit transactions, including refinancings, subject to the Motor Vehicle Sales Finance Act, R.S. 6:969.1 et seq.

(5) Federally chartered and state chartered credit unions and transactions between credit unions and the members thereof.

(6) Pawn brokerage services.

(7) Credit transactions involving extensions of credit for business, commercial, or agricultural purposes.

(8) Federally related mortgage loans.

### **§3513. Waiver, agreement to forego rights**

A consumer may not waive or agree to forego rights or benefits under this chapter except that a claim, if disputed in good faith, may be settled by compromise or agreement.

### **§3514. Agreement to contract; disclosures of the contract**

A. The parties to a transaction other than a consumer credit transaction may contract with one another that such transactions shall be subject to the provisions of this Chapter, in which event the transaction shall be a consumer credit transaction within the provisions of this Chapter. Notwithstanding the foregoing, the parties to a consumer credit transaction otherwise subject to the Motor Vehicle Sales Finance Act, R.S. 6:969.1 et seq. may not contract to become subject to the provisions of this Chapter. Unless a creditor is exempt from the licensing requirements of this Chapter under R.S. 9:3560, a creditor may not contract more than four transactions under the provisions of this Chapter over any calendar year without first complying with the licensing requirements under Part IX of this Chapter.

B. Written credit contracts and agreements shall accurately reflect the actual terms, conditions, and repayment schedule agreed to by the parties. If a loan is to be repaid on demand, in a lump sum, or at undefined intervals of time, interest on the loan shall be computed by the actuarial or simple interest method when allocating payments made on the loan.

### **§3515. Conduct of certain business other than making consumer loans prohibited**

A. (1)(a) A licensed lender shall not engage in the business of making sales of goods at any location where consumer loans are made. The sale and financing of a home protection plan, thrift and buying club memberships, auto club memberships, insurance authorized by the Louisiana Insurance Code, similar consumer benefit club memberships, or financial and tax services, including the use of debit cards or electronic cash for loan disbursement, shall not be deemed a violation of this Chapter. The word "location" as used in this Section means the entire space in which consumer loans are made and said location must be separated from any

location in which merchandise is sold or displayed by walls that may be broken only by a passageway to which the public is not admitted.

(b) In addition, the cost of any home protection plan, club membership, insurance, or service offered pursuant to this Section may, at the option of the consumer, be payable from the proceeds of consumer loans and included on the amount financed, provided that:

(i) The sale of a home protection plan, club membership or service is not a factor in the approval and this fact is clearly disclosed in writing to the consumer.

(ii) In order to obtain a home protection plan, club membership, insurance, or service, the consumer gives a specific affirmative written indication of his desire to purchase it after receiving written disclosure of the cost.

(2) Nothing contained herein shall be construed to prohibit a licensed lender from conducting the business of making consumer loans under this Chapter on the same premises where a person, not an affiliate of said licensed lender, is engaged in the business of making sales of goods, provided that such licensed lender is not an affiliate.

B. A sale of goods or services made with the use of a seller credit card or lender credit card or other credit arrangement at a location other than that of the licensee does not violate this section. Formal application for a loan must be made at the location of the licensed lender; however, when a loan application is taken by persons not employed by the licensed lender, such application shall not be deemed a violation of this section.

C. An occasional sale of property used in the ordinary course of the business of the licensee does not violate this section.

D. A sale of property seized or legally recovered by the licensed lender does not violate this Section.

E. No licensed lender shall conduct the business of making consumer loans under this Chapter under any name and from or at any place of business within this state, other than that stated in the license. The closing of a consumer loan on immovable property in the office of a notary public shall not violate this Section. Loans made by mail where credit approval is given at the location of the lender and loans made with the use of a lender credit card shall not violate this Section. Loans governed by R.S. 9:3550 that are closed at an insurance agent/broker's location shall not violate this Section provided the loan shall be accepted by a licensed lender.

F. The commissioner may issue a permit to persons licensed and regulated by the Office of Financial Institutions under the provisions of R.S. 37:1781 through 1808 to conduct the sale of goods and services at a location where consumer loans are made pursuant to the provisions of this Chapter. The commissioner shall have the authority to deny the permit or suspend and/or terminate the permit for violations of this Chapter. The commissioner may adopt rules to implement the provisions of this Subsection. Such rules shall require the commissioner to grant or deny the permit within thirty days from the date the application for a permit is filed with the Office of Financial Institutions.

#### **§3516. Definitions**

(1) "Affiliate", as used in this Chapter, means a specific person who is directly or indirectly,

through one or more intermediaries, controlled by, or controls, or is under common control with the person specified.

(2) "Agricultural purpose" means a purpose related to the production, harvest, exhibition, marketing, transportation, processing, or manufacture of agricultural products by a natural person who cultivates, plants, propagates or nurtures the agricultural products. "Agricultural products" includes products such as horticultural, and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shell fish, and any products thereof, including processed and manufactured products, and any and all products raised or produced on farms and any processed or manufactured products thereof.

(3) "Amount deferred" means the cash price, subtracting any down payment, under a consumer credit sale, revolving charge or seller credit card account, plus any other charges, fees and closing costs authorized by law, that are financed by the creditor under the transaction or included in or added to the balance of the consumer's indebtedness subject to credit service charges.

(4) "Amount financed" means the amount borrowed under a consumer loan, revolving loan or lender credit card account, plus any other charges, fees, and closing costs authorized by law, that are financed by the creditor under the transaction, or included in or added to the balance of the consumer's indebtedness subject to loan finance charges. Amount financed also includes premiums payable for insurance procured in lieu of perfecting a security interest otherwise required by the creditor in connection with the sale, lease, or loan if the premiums do not exceed the fees and charges which would otherwise be payable, and premiums payable for any insurance authorized by the Louisiana Insurance Code purchased by the consumer, at rates set forth herein or, when no rate is specified herein, at lawful rates in accordance with the provisions of the Louisiana Insurance Code.

(5) "Billing period" or "billing cycle" means the time interval between regular periodic billing statement dates. Such intervals may be considered equal intervals of time unless a billing date varies more than four days from the regular date.

(5.1) "Cash advance" means an advance of cash or a cash equivalent under a lender credit card account including but not limited to the purchase of a money order, wire transfer services, or the use of a convenience check to purchase goods or services.

(6) "Cash price" of goods and services means the price for which the seller would have sold to the consumer and the consumer would have bought from the seller, the thing that is the subject matter of the consumer credit transaction, if such sale had been a sale for cash instead of a consumer credit transaction. The cash price may include any taxes and charges for delivery, installation, servicing, processing, repairs, alterations or improvements.

(7) "Check" means any check, draft, item, orders or requests for payment of money, negotiable orders, withdrawal or any other instrument used to pay a debt or transfer money from one to another.

(8) "Closing costs" with respect to a debt secured by a mortgage, lien, or privilege on immovable property includes:

(a) fees or premiums for title examination, title curative expenses, title insurance, or similar

purposes including surveys, and essential public certificates,

(b) fees for preparation of an act, settlement statement, or other documents,

(c) escrows for future payments of taxes and insurance,

(d) notarial fees,

(e) recording fees,

(f) appraisal fees, and

(g) credit reports.

(9) “Commissioner” means the commissioner of financial institutions.

(10) “Consumer” means a natural person who purchases goods, services, or movable or immovable property or rights therein, for a personal, family, or household purpose and includes a purchaser or buyer in a consumer credit sale or transaction made with the use of a seller credit card or otherwise, or a borrower or debtor in a consumer loan, revolving loan account, or a lender credit card.

(11) “Consumer credit insurance” means insurance, other than insurance on property, by which the satisfaction of debt in whole or in part is a benefit provided, but does not include

(a) insurance issued as an isolated transaction on the part of the insurer not related to an agreement or plan for insuring debtors of the creditor; or

(b) insurance indemnifying the creditor against loss due to the debtor’s default.

(12) A “consumer credit sale” is the sale of a thing, other than the sale of religious periodicals, books, and other religious materials by bona fide religious associations, or immovable property, in which a credit service charge is charged and the purchaser is permitted to defer all or part of the purchase price or other consideration in two or more installments excluding the down payment when the thing is purchased primarily for personal, family, or household purposes, and the purchaser is a person other than an organization. “Consumer credit sale” shall not include a lease of movable property under which the lessee agrees to pay as compensation for use a sum substantially equivalent to, or in excess of, the initial value of the leased property and under which the lessee will become, or has the option to become, for no additional consideration or for nominal consideration, the owner of the leased property upon compliance with the agreement.

(13) “Consumer credit transaction” means a consumer loan or a consumer credit sale but does not include a retail installment contract made pursuant to R.S. 6:951 et seq.

(14) “Consumer loan” means a loan of money or its equivalent made by a supervised financial organization, a licensed lender, or lender in which the debtor is a consumer, and the loan is entered into primarily for personal, family, or household purposes and includes debts created by the use of a lender credit card, revolving loan account, or similar arrangement, as well as insurance premium financings. A “consumer loan” further includes a loan of money or

its equivalent to a consumer entered into primarily for personal, family, or household purposes, which is secured by a second or junior lien or mortgage on owner-occupied one-to-four family residential immovable property, or which is secured by a first lien or mortgage on owner-occupied one-to-four family residential immovable property to the extent that the loan does not qualify as a federally related mortgage loan.

(15) “Credit card” means any card, plate, coupon book, or other single credit device that may be used from time to time to obtain credit.

(16)(a) “Credit service charge” means the sum of the following:

(i) All charges payable directly or indirectly by the consumer and imposed directly or indirectly by the seller as an incident to the extension of credit, including any of the following types of charges that are applicable: time price differential; service; carrying or other charge, however denominated; premium or other charge for any guarantee or insurance protecting the seller against the consumer’s default or other credit loss; and

(ii) Charges paid by the consumer for investigating the collateral or credit worthiness of the consumer or for commissions or brokerage for obtaining the credit, irrespective of the person to whom the charges are paid or payable, unless the seller had no notice of the charges when the credit was granted.

(b) The term does not include default charges, delinquency charges, deferral charges, N.S.F. check charges as set forth in R.S. 9:3529, origination fees as set forth in R.S. 9:3530, or any of the items enumerated in R.S. 9:3516(3)(c).

(17) “Down payment” means an amount, including the value of any property used as a trade-in, paid to a seller to reduce the cash price of goods or services purchased under a consumer credit sale.

(18) The term “extender of credit” or “creditor” as used in this Chapter includes a seller in a consumer credit sale, revolving charge account, or transaction made with the use of a seller credit card or otherwise, or a lender in a consumer loan, a revolving loan account, or a lender credit card transaction. “Creditor” also includes a subsequent assignee or transferee of the consumer’s obligation, but does not include a bona fide pledgee.

(19) “Federally related mortgage loan” as used in this Chapter shall have the same meaning as provided in the Residential Mortgage Lending Act, specifically R.S. 6:1083(13).

(20) “Ahome solicitation sale” is a consumer credit sale of goods or services or both, other than motor vehicles, farm equipment, or services, in which the seller or a person acting for him engages in a personal solicitation of the sale at any place other than the business establishment of the seller and consumer’s agreement or offer to purchase is there given to the seller or a person acting for him. This definition shall also include all telephone sales in which the seller has initiated contact regardless of his location, and the consumer’s agreement to purchase is made at the consumer’s home. It does not include a sale made pursuant to a preexisting revolving charge account, a catalogue credit sale, a preexisting consumer credit sale agreement providing for a series of sales, or a sale made pursuant to prior negotiations between the parties at a business establishment at a fixed location where goods or services are offered or exhibited for sale, or a sale that may have been initiated by the consumer by communication with the seller at his business establishment.

(21) “Lender credit card” means a revolving loan account that may be accessed by use of a credit card. For limited purposes of R.S. 9:3516(23)(b), 3517(B), 3524(D), 3527, 3529, and 3530, a “lender credit card” includes a travel and entertainment credit card account that is not subject to loan finance charges or credit service charges.

(22) “Licensed lender” means a person licensed by the commissioner to make consumer loans pursuant to this Chapter.

(23)(a) “Loan finance charge” means the sum of the following:

(i) All charges payable directly or indirectly by the consumer and imposed directly or indirectly by the lender as a requirement of the extension of credit, including any of the following types of charges that are applicable: interest or any amount payable under a point, discount, or other system of charges, however denominated; and

(ii) Charges paid by the consumer for investigating the collateral or credit worthiness of the consumer.

(b) The term does not include default charges, deferral charges, delinquency charges, N.S.F. check charges as set forth in R.S. 9:3529, reasonable membership charges in connection with an open-end credit plan, origination and other fees as set forth in R.S. 9:3530, any of the items enumerated in Subparagraph (8)(b) of this Section, or other fees and charges that are not considered to be a finance charge under the Federal Truth in Lending Act and Regulation Z of the Board of Governors of the Federal Reserve System.

(24) “Organization” means corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative, or association.

(24.1) “Person” as used in this Chapter means an individual or corporation, partnership, trust, association, joint venture pool, syndicate, sole proprietorship, unincorporated organization, or any other form of entity not specifically listed herein.

(25) “Precomputed consumer credit transaction” means a consumer credit transaction under which loan finance charges or credit service charges are computed in advance over the entire scheduled term of the transaction and capitalized into the face amount of the debtor’s promissory note or other evidence of indebtedness.

(26) “Prepaid finance charge” in connection with a simple interest transaction means any loan finance charge or credit service charge paid separately in cash or by check before or at consummation of the transaction, or withheld from the proceeds of the transaction at any time. Prepaid finance charges may be funded under the loan at the borrower’s request by increasing the original amount financed or amount deferred under the borrower’s note, with such increased amount, including prepaid finance charges, being subject to simple interest over the loan term. Prepaid finance charges shall not be included in the contract rate.

(27) “Principal” means the amount financed or amount deferred under a consumer credit transaction.

(28) “Pro rata” as used in this chapter refers to a method of computing deferral charges by dividing the precomputed loan finance charge or precomputed credit service charge by the

total number of days in the contract and multiplying the sum by the number of days that are deferred.

(29) “Revolving charge account” means an arrangement between a seller or issuer of a seller credit card honored by the seller and a consumer pursuant to which:

(a) The creditor permits the consumer to purchase goods or services on a preauthorized basis;

(b) The creditor reasonably contemplates repeated transactions;

(c) The creditor may impose a credit service charge from time to time on the outstanding unpaid balance of the consumer’s account;

(d) The amount of credit that may be extended to the consumer, up to any limit set by the creditor, is generally made available to the extent that any outstanding balance is repaid; and

(e) No credit service charges may be imposed upon the consumer for a billing period if the account is paid in full within a period of twenty-five days from the billing date.

(30)(a) “Revolving loan account” means an arrangement between a lender and a consumer pursuant to which:

(i) The creditor may permit the consumer to obtain consumer loan advances on a preauthorized basis;

(ii) The creditor reasonably contemplates repeated transactions;

(iii) The creditor may impose a loan finance charge from time to time on the outstanding unpaid balance of the consumer’s account; and

(iv) The amount of credit that may be extended to the consumer under the account, up to any limit set by the creditor, is generally made available to the extent that any unpaid balance is repaid.

(b) The amount borrowed under a revolving loan account may include, if required by the creditor, an amount not greater than ninety-nine dollars and ninety-nine cents exceeding the draft or similar order if said amount is immediately credited to the consumer’s deposit account with the creditor or with the creditor’s agent.

(31) “Seller credit card” means a revolving charge account that may be accessed by use of a credit card.

(32) “Simple interest transaction” means a consumer credit transaction under which loan finance charges or credit service charges are assessed by application of a contractual simple interest rate or rates to the unpaid balance of the debtor’s promissory note, account or other evidence of indebtedness.

(33) “Supervised financial organization” means either of the following:

(a) A banking or similar organization organized, certified, and supervised by an agency of



either the United States of America or the state of Louisiana or any other state pursuant to the banking, currency, and related laws of the United States of America or of the state of Louisiana or any other state.

(b) An organization which is an approved lender under the rules and regulations of the Federal Housing Administration, the Veterans Administration, or the Federal Home Loan Mortgage Corporation.

(34) Repealed by Acts 1995, No. 1184, § 4.

(35) “Thing” as used in the chapter is as defined by law and includes movable and immovable property and rights therein, goods, or services.

(36) “Unconscionable”. A contract or clause is unconscionable when at the time the contract is entered into it is so onerous, oppressive or one-sided that a reasonable man would not have freely given his consent to the contract or clause thereof in question; provided, however, for the purposes of this chapter, an agreement, clause, charge or practice expressly permitted by this chapter or any other law or regulation of this state or of the United States or subdivision of either, or an arrangement, clause, charge or practice necessarily implied as being permitted by this chapter or any other law or regulation of this state or the United States or any subdivision of either is not unconscionable.

(37) “Unpaid debt” as used in this Chapter means the total of the amount financed, loan finance charges, default charges, and delinquency charges including the amount due at the time of default plus all interest which may accrue from the time of default until the entire balance is paid.

#### **§3517. Terms; construction; additional fees and charges**

A. Wherever applicable in this Chapter, use of the masculine includes the feminine and use of the plural includes the singular and vice versa.

B. As a general rule of construction, persons may look to comparable rules, definitions, and principles under the Federal Real Estate Settlement Procedures Act and Regulation X of the Office of the Secretary of the Department of Housing and Urban Development, the Federal Truth in Lending Act, and Regulation Z of the Board of Governors of the Federal Reserve System for guidance in further defining and interpreting terms and concepts that are not otherwise defined or specified under the provisions of this Chapter. For example, those fees and charges that are not classified as or considered to be finance charges for Federal Truth in Lending purposes are not considered to be loan finance charges for purposes of this Chapter. In addition, nothing contained in the provisions of this Chapter shall be construed to prohibit the imposition of fees and charges which are otherwise permissible under R.S. 6:548.

C. The commissioner shall prescribe, by rule not inconsistent with the provisions of this Chapter, additional fees and charges which may be imposed and collected by an extender of credit if such fees and charges have been contractually provided for in the consumer’s promissory note, or credit contract or agreement.

#### **§3518. Construction against implicit repeal**

This chapter being a general act intended as a unified coverage of its subject matter, no part of it shall be deemed impliedly repealed by subsequent legislation if such construction can

reasonably be avoided.

### **§3518.1. Records of the office of financial institutions**

A. Except as otherwise provided, all records of the office of financial institutions shall be kept strictly confidential within the office, and such records and reports shall not be subject to subpoena or other legal process.

B. The commissioner, in his sole discretion, when requested in writing, may disclose or cause the employees of the office of financial institutions to disclose records of the office of financial institutions concerning any person governed by this Chapter of the Louisiana Revised Statutes of 1950, when such records are requested by another state or federal agency having authority to investigate or license such person governed by this Chapter, or are requested by a bankruptcy trustee or any law enforcement agency in connection with an investigation to recover assets of a current or former licensee.

C. Confidential records of either the office of financial institutions or of one of its supervised entities licensed under this Chapter, produced by discovery or introduced into evidence as part of a public hearing conducted under the Louisiana Administrative Procedure Act shall remain confidential and not be deemed public.

D. Notwithstanding any provision of law to the contrary, except for documents or information of other federal or state regulatory or law enforcement agencies in the possession of the office of financial institutions, any federal or state district court within Louisiana may order the office of financial institutions to disclose information and produce documents belonging to the office of financial institutions which are relevant to claims or issues at dispute in a lawsuit subject to the following conditions:

(1) The requesting party shall file the appropriate motion in the proper federal or state court setting forth the documents or information requested with sufficient specificity and the basis for such request.

(2) The requesting party shall provide the office of financial institutions with a copy of any such filing prior to any scheduled proceeding designed to resolve the motion to allow the office a reasonable period of time within which to respond to such filing in an adequate manner, but in no event fewer than ten days prior to such scheduled hearing date.

(3) When no other source for such information requested is available, and upon a showing by the requesting party of good cause and substantial need, the court may require the disclosure of all or a part of the information requested subject to a protective order. The contents and terms of such protective order shall be determined solely by the office of financial institutions with the approval of the court.

E. For the purpose of this Section, there shall be no liability on the part of, and no cause of action shall rise against, the office of financial institutions for any good faith release or disclosure of information or for statements made in good faith in any hearings conducted according to the Louisiana Administrative Procedure Act or in any reports or communications concerning the supervision and regulation of all Code Title XII entities under the jurisdiction of the office of financial institutions.

### **§3518.2 Credit cards; unsolicited delivery or mailing prohibited; penalty**

A. As used in this Section, “credit card” means any credit card as defined in R.S. 9:3516(15) and any other document or device intended or adopted for the purpose of establishing the identity and credit of any person in connection with the purpose of renting on credit goods or services, or obtaining loans.

B.(1) Except as provided in Subsection C of this Section, it shall be unlawful for any financial institution, retail merchant, or other person to mail or otherwise deliver any credit card in this state.

(2) Whoever violates this Subsection may, upon conviction, be sentenced to pay a fine of not more than one thousand dollars per occurrence.

C. This Section shall not apply to any credit card when mailed or otherwise delivered either:

(1) In response to a request or application for a credit card.

(2) As a replacement for a credit card previously issued to the person to whom the credit card is shipped or mailed.

D. If any credit card is issued to a person who has not requested or accepted by use the issuance of such credit card, the issuer shall be liable to the person whose name appears on the credit card for any damages and expenses or either, including attorney’s fees, which the person incurs due to the use of such credit card without permission of the person to whom it is issued.